U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 12637549

Date: FEB. 2, 2021

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a Brazilian jiu-jitsu competitor, seeks classification as an individual of extraordinary ability. This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, and we subsequently dismissed the appeal.[1] The matter is now before us on a motion to reconsider.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will deny the motion.

I. LAW

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles). Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010).

Further, a motion to reconsider is based on an *incorrect application of law or policy*, and a motion to reopen is based on documentary evidence of *new facts*. The requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

[1] *See* In Re: 6619081 (May 1, 2020).

II. ANALYSIS

The Director denied the petition, concluding that the Petitioner did not demonstrate that she received a major, internationally recognized award and that she satisfied only two of the initial evidentiary criteria, awards at 8 C.F.R. § 204.5(h)(3)(i) and published material at 8 C.F.R. § 204.5(h)(3)(iii), of which she must meet at least three. In dismissing her appeal, we also determined that the Petitioner did not fulfill the one-time achievement and did not establish eligibility for any additional criteria.

A. Judicial Proceeding Statement

The regulation at 8 C.F.R. § 103.5(a)(1)(iii) requires the motion to be "[a]ccompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceedings and, if so, the court, nature, date, and status or result of the proceeding." The Petitioner, however, did not include the required statement. Therefore, the Petitioner's motion does not meet the applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

B. Motion to Reconsider

A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceeding at the time of the decision. *See* 8 C.F.R. § 103.5(a)(3). On motion, the Petitioner submits a brief claiming that her [redacted] World Championships qualify as one-time achievements. In our prior decision, we specifically addressed her arguments and evidence and explained why her claims and documentation did not establish eligibility of [redacted] World Championships as major, internationally recognized awards. On motion, the Petitioner did not explain or demonstrate how we erred or incorrectly applied law or policy.

In addition, the Petitioner argues that she meets the "three-out-ten-rule" because she satisfied the membership criterion at 8 C.F.R. § 204.5(h)(3)(ii) and generally references claims and material that we previously evaluated. Again, the Petitioner does not specifically point to how we improperly applied law or policy rather than generally alleging error. Our decision detailed why the Petitioner did not sufficiently document how her memberships with the [redacted] Hall of Fame and the [redacted] World Championship Club [redacted] fulfilled the membership criterion. Specifically, as it relates to [redacted] the Petitioner made assertions and assumptions that were not supported in her documentation, and she did not establish [redacted]'s membership requirements. Regarding [redacted] we explained how automatic membership, without being judged by recognized national or international experts, does not meet the regulatory requirements for the membership criterion.

The Petitioner does not address any of these issues on motion, nor did she demonstrate how we incorrectly or improperly adjudicated her appeal. Disagreeing with our conclusions without showing that we erred as a matter of law or pointing to policy that contradicts our analysis of the evidence is not a ground to reconsider our decision. *See Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) (finding that a motion to reconsider is not a process by which the party may submit in essence, the same brief and seek reconsideration by generally alleging error in the prior decision.)

As she did not demonstrate that we incorrectly dismissed her appeal, the Petitioner did not establish that she meets the requirements of a motion to reconsider. Therefore, we will deny her motion.

III. CONCLUSION

The Petitioner has not shown that we incorrectly dismissed her appeal based on the record before us.

ORDER: The motion to reconsider is denied.